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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,032	05/11/2006	Roger Philip Sack	020216-000003	6060
24239 7590 11/26/2007 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709			EXAMINER WACHSMAN, HAL D	
			ART UNIT 2857	PAPER NUMBER
			MAIL DATE 11/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,032

Applicant(s)

SACK ET AL.

Examiner

Hal D. Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2-11, 13 and 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12-30-05</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election with traverse of species II, subspecies ii (generic independent claim 1 and dependent claims 12 and 14 readable on this elected species/subspecies) in the reply filed on 9-26-07 is acknowledged. The traversal is on the ground(s) that the Examiner has issued a species requirement based upon the claims in the application. According to M.P.E.P. 806.04(e) claims are definitions of inventions. Claims are never species and species are the specifically different embodiments. This is not found persuasive because the restriction requirement did not indicate that the claims are species. For example, paragraph 1. II. of the restriction requirement stated "II. The **species** to which claims 12-23 **are drawn**." The Examiner respectfully notes that this is not saying that claims 12-23 are a species *but is referring to the species that claims 12-23 are drawn to*.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 2-11, 13 and 15-23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species/subspecies, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9-26-07.

3. The drawings are objected to for the following reasons: Figure 8, block 47, contains an "A.A.U (ANTI AMNESIA UNIT)" however there appears to be no reference to this in the specification and no explanation of what this is exactly. Also each of the drawings are labeled at top with the WO 2005/016723 and PCT/AU2004/001107 application numbers however 10/563,032 is the application number of the instant

application. In addition, Figures 1 and 3-6 are objected to under 37 C.F.R. 1.84(m) because solid black shading is not permitted. Appropriate correction is required.

4. There is no statement of continuing data on the first page of the specification. Appropriate correction is required.

5. Both the declaration and the bibliographic data sheet for the instant application indicate a claim for foreign priority to 2003904423 AU 08/19/2003. However, the copy of the ribboned PCT/AU2004/001107 foreign priority document states that it is a true copy of the Provisional specification *in connection* with Application No. 2003904423 as filed on 19 August 2003 and thus there is ambiguity with respect to whether there is or not another priority document for the 2003904423 Australia application that has not been filed. Appropriate explanation/correction is required.

6. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. The only Abstract found in the image file wrapper is the one on the first page of the WO 2005/016723 A1 document. Appropriate correction is required.

7. Page 3, lines 18-20, of the specification states "It will be clearly understood that, if a prior art publication is referred to herein, this reference does not constitute an admission that the publication forms part of the common general knowledge in the art in Australia or in any other country". However, the above is improper under 37 C.F.R. 1.71 because the specification is a written description of the invention or discovery and of the manner and process of making and using the same. Appropriate correction is required.

8. The use of the trademarks Digicore (page 12 of the specification) and York (page 13 of the specification) have been noted in this application. They should be *capitalized* wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

9. Page 10, line 32, of the specification, cites "nett weight" however was this intended to be "net weight" ?

10. Pages 13, 15 and 16 of the specification contain footnoting however there is no provision in the MPEP for footnoting in a specification. Appropriate correction is required.

11. The Brief Description of the Drawings with respect to Figure 9 states "Figure 9 is a detailed block diagram of the system of the invention according to a particular preferred embodiment" which does not state exactly which embodiment is being shown in Figure 9. This same type of problem also occurs on page 17, lines 24-25, of the specification. Appropriate correction is required.

12. The listing of references in the specification (see list of references on pages 17-18 of the specification) is not a proper information disclosure statement. 37

CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper."

Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

13. Claim 1 is objected to under 37 C.F.R. 1.75(i) because each step in the claim is not separated by a line indentation. Appropriate correction is required.

14. Claims 1, 12 and 14, are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, line 2, cites "the dynamic effect" which lacks antecedent basis. The last 3 lines of claim 1 cite "...determining one or more parameters...." which does not particularly point out exactly how the dampening ratio of the suspension, the oscillation frequency of the suspension and the impact loading of the vehicle are being determined. Claim 1, lines 5 and 6, cite "the suspension" however the antecedent basis is "vehicle suspension system". This same type of problem also occurs in claim 14. The last line of claim 1 cites "the impact loading of the vehicle" which lacks antecedent basis. The preamble of claims 12 and 14 cite "A method according to..." which it appears should be "The method according to...". Claim 14, line 4, cites "the predetermined standards" which lacks antecedent basis. The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 1, 12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is a gap in claim 1 between the "determining one or more parameters...." step and the preceding "measuring the dynamic effect of an impulsive load..." step as the determining step dangles in the claim because there is a lack of a clear connection between the two steps in the claim as the claim does not particularly point out how the measurement of the dynamic effect of an impulsive load is then utilized with respect to the determination of the various cited parameters. In addition, because the claim states "determining or more parameters selected from the group..." in which the group consists of three different types of parameters that may be determined, the list of potential alternatives can vary and thus ambiguity arises in the claim (see MPEP 2173.05(h), section III).

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Vanhala (4,936,136).

19. As per claim 1, Vanhala (Abstract, col. 1 lines 41, 42, 65-68) discloses "measuring the dynamic effect of an impulsive load with an electronic weighing system, wherein the electronic weighing system is mounted onboard the vehicle". Vanhala (Abstract, col. 1 lines 31-39, 41-46) discloses determining the parameter, impact loading of the vehicle.

20. The following references are cited as being art of general interest: Translation of DE 42 26 010 A1 which discloses monitoring the service life of vehicle components, Tsymborov (5,369,974) which discloses a suspension tester and method, KcKenney et al. (3,877,289) which disclose testing shock absorbers, Murata et al. (5,928,297) which disclose a suspension control device, Bradshaw et al. (5,218,546) which disclose a frequency shaping method for minimizing impact harshness of a suspension system, Davis (6,389,341) which discloses a control system for a vehicle suspension, Lafferty (4,619,467) which disclose impulsive forces and dynamic conditions in association with a vehicle suspension and Muller (6,360,580) which discloses testing vehicle shock absorbers.

21. No claims are allowed.


22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW
November 19, 2007